

# **Exhibit 2**



505 E. McCarty Street, Suite 300  
Jefferson City, Missouri 65101  
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November 6, 2019

**Via Electronic Mail** (shiante.mcmahon@prosecutor.mo.gov ) and

**Via Certified Mail, Return Receipt Requested**

Shiante McMahon, Prosecuting Attorney  
Linn County, Missouri  
P.O. Box 77 Courthouse Annex  
Linneus, Missouri 64653-0077

**Re: Torch Electronics, LLC – No Chance Gaming Machines**

Ms. McMahon:

As you probably know, local law enforcement in Marceline seized certain of Torch's machines some time ago alleging that the same are illegal gaming devices under Missouri law. In my initial email to you, which is attached, I explained how the Torch machines work and why they are not violative of Missouri law.

Recently, my client has been contacted by a local police officer in Marceline requesting that Torch provide the PIN Codes to allow access for evaluation of the software. Torch, through our office, has offered to meet with you and local law enforcement to show you how the machines work and discuss the reasons they do not fit into the definition of a gambling device. To date, I have not heard from you regarding that offer.

While Torch is committed to being cooperative with regard to the investigation, we would like to propose an alternative to providing the PIN codes and allowing an unknown party to evaluate the software.

Our office contracted with a third-party consultant to conduct a review and examination of the software to confirm the operation of the games in relation to Missouri law. We are willing to share a redacted version of the report of this consultant which confirms the function of the games as we have presented them to you in prior correspondence. We also remain open to meeting with you to show you how the games operate and discuss our position with regard to the same in relation to Missouri law.

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Torch\_003100

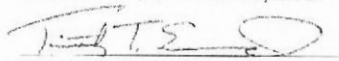


We are hopeful that this offer will be a suitable arrangement for addressing law enforcement's concerns.

Of course, please call if you have any questions.

Sincerely,

**SIGMUND BROWNING, LLC**

A handwritten signature in dark ink, appearing to read "T. Sigmund", written over a horizontal line.

Timothy T. Sigmund

cc: Client (via email)

**Tim Sigmund**

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**From:** Tim Sigmund  
**Sent:** Monday, October 28, 2019 7:12 PM  
**To:** 'shiante.mcmahon@prosecutors.mo.gov'  
**Subject:** RE: Torch Electronics - No Chance Game Machines

Ms. McMahon:

Following up again on the issues relating to the No Chance Game machines which have been seized by local law enforcement. Let me know if we can schedule a time to meet and discuss the same.

Thanks,

*Timothy T. Sigmund*

Sigmund Browning, LLC  
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**From:** Tim Sigmund  
**Sent:** Friday, September 27, 2019 3:14 PM  
**To:** shiante.mcmahon@prosecutors.mo.gov  
**Subject:** RE: Torch Electronics - No Chance Game Machines

Ms. McMahon:

Just following up on my email below and our conversation a couple of weeks ago. I realize you are busy, but we had discussed a possible release of some of my clients' machines since they are all the same and I was hoping we could address that subject again. Additionally, we would still welcome the opportunity to meet with you to discuss these games at a mutually convenient time.

Have a wonderful weekend.

Thanks,

*Timothy T. Sigmund*

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**From:** Tim Sigmund  
**Sent:** Thursday, September 19, 2019 5:43 PM  
**To:** [shiante.mcmahon@prosecutors.mo.gov](mailto:shiante.mcmahon@prosecutors.mo.gov)  
**Subject:** Torch Electronics - No Chance Game Machines

Ms. McMahon:

Thanks so much for taking the time to talk to me last Friday. I apologize for not sending you this email sooner as I had promised.

As we discussed, our client, Torch Electronics, LLC, owns and operates "no chance game" machines throughout Missouri. Below is information regarding these games which I hope will be useful to you as you make your determination with regard to prosecution. I am also including a list of locations at which Torch has placed games in Linn County. Our client did want to note that at least one of these locations is offering games not owned by Torch which Torch believes may not be in accord with Missouri law. Torch has been letting the location owner test the machines, but has also requested that they remove the other machines. Once you have reviewed the information below, my client and I hope to meet with you to show you the games, discuss the software that operates it, and answer any questions that you may have.

As I noted in our discussion, other jurisdictions have raised issues due to the appearance of the machines suggesting they are illegal gambling devices. However, Torch, together with the companies which design the machines and the



games on them, have taken great care to ensure that the same do not violate Missouri law in relation to illegal gaming. More specifically, the games are set up so that there is no element of "chance" for the user.

#### Background on Games

The State of Missouri has determined that three elements must be present for a game to be considered illegal. These elements are, (i) consideration, (ii) chance, and (iii) prizes. The machines offered by Torch do not meet the definition because they negate the second element. In fact, the machines are specifically designed so that there is no element of chance in relation to the outcome of the game or the potential prize.

Torch engaged the services of a full-service regulatory compliance test laboratory and electronic gaming device consulting organization to review the games on Torch's machines and the software related to the same. The consultant's experience in evaluating electronic gaming equipment in regulated gaming jurisdictions allowed it to evaluate Torch's machines to distinguish the same from gambling devices.

After extensive evaluation, the consultant determined that the system on which the game is designed is a "finite system". More specifically, the outcomes of all games on the machine are selected and delivered sequentially from predetermined finite pools of game outcomes. To the extent that the user interacts with the game, there is no impact on the outcome or the prize to be awarded from the predetermined finite pool of game outcomes. In other words, the outcomes are not random and there is no random number generator feature which creates the element of chance.

Of significant importance to distinguishing Torch's machines from gambling devices is the "prize viewer" feature. This aspect of the machine allows the user to view upcoming game outcomes without committing any consideration. The user simply presses the "Prize Viewer" icon on the machine and the game outcomes are displayed. This option can be used before or after the user deposits money in the machine. If the user has deposited money into the machine, but is dissatisfied with the upcoming game outcomes, the user can retrieve his or her money by pressing a button designated as "Cash Out". It is important to note that both the outcome of the game and the amount of the prize are indicated to the user upon accessing the "Prize Viewer" button. While other games in Missouri may have a prize viewer feature, unlike Torch's machines, the outcomes are random in that they are "shuffled" or "reset" each time the game is played.

The most important aspects of the games are that each machine and the games on the machine, as previously noted, have predetermined, finite pools of game outcomes. As the user plays the game, the software continues to deliver the next game outcome sequentially from the predetermined finite pools and are available to be viewed via the "Prize Viewer" button. As such, there is no element of "chance" relating to the game.

#### Analysis

Our research indicates that Missouri does not have any law relating specifically to the types of machines offered by Torch. Additionally, to the best of our knowledge, those parties claiming the Torch machines are illegal have not analyzed the Torch software. Instead, we believe they are judging by the appearance of the machines being similar to games which likely are illegal. In fact, I have noticed that some of these non-Torch machines have taken Torch's game instructions and disclaimers and copied them exactly onto their machines without the permission of Torch.

Our analysis of the laws relating to regulated gaming devices shows that Torch's games do not fall into such category. Because the games on Torch's machines do not contain an element of "chance", they are not illegal gambling devices.

The Missouri Constitution at Article III, Section 39, addresses lotteries and gambling. In Harris v. Missouri Gaming Commission, 869 S.W.2d 58, (Mo. Banc 1994), the Court considered a challenge to the constitutionality of the state statute authorizing riverboat gambling. While not directly applicable to the Torch machines, the Court noted that the elements of a lottery are "consideration, chance, and prize." Id. at 62. Importantly, the Court noted in its analysis

that, "'chance' is central and is defined as 'something that happens unpredictably without any discernible human intention or direction....' Webster's Third New International Dictionary 373 (1976)." *Id.* The Torch machines are specifically designed to remove the element of "chance" as the outcomes are not "unpredictable".

Section 572.010(4) RSMo defines "Gambling", in relevant part, as occurring when a person, "stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under his or her control or influence, upon an agreement or understanding that he or she will receive something of value in the event of a certain outcome". Subsection (3) defines "Contest of Chance" as, "any contest, game, gaming scheme or gaming device in which the outcome depends in a material degree upon an element of chance, notwithstanding that the skill of the contestants may also be a factor therein." Subsection (5) defines a "Gambling device", in relevant part, as, "any device, machine, paraphernalia or equipment that is used or usable in the playing phases of any gambling activity, whether that activity consists of gambling between persons or gambling by a person with a machine." Critical in the definitions is the element of "chance".

In Thole v. Westfall, 682 S.W.2d 33, 35 (Mo. App. E.D. 1984), there were four types of devices at issue; one featuring a Black Jack poker game and the others simulating elements of draw poker. The devices were designed to simulate slot machine play. The Thole Court noted that based on Section 517.010 RSMo, "gambling includes playing games wherein 1) players stake or risk something of value, 2) chance is a material factor and 3) successful play is rewarded by 'something of value'." *Id.* It is important to note that the Court determined that the games on the devices at issue had all the elements of gambling per the definition; specifically recognizing that the outcome of the games depended materially on the element of chance. The Court determined that "winning is purely a matter of luck, a matter of chance". *Id.* at 37.

In Veterans of Foreign Wars Post 6477 v. Missouri Gaming Commission, 260 S.W.3d 388 (Mo. App. W.D. 2008), the Court affirmed the decision of the Missouri Gaming Commission to revoke the bingo license of appellant for operating illegal gambling devices. Four devices were determined to be illegal gambling devices as they met all of the elements set forth in Thole. The Court noted that the devices at issue had, "multiple-coin features, they had a multiple-play option where more than one credit could be played at a time, none of the machines involved the application of skill, the games offered were casino-type games, the machines had a short time of play, they had a fixed payoff, they had multiple meters, they had a "knockoff" feature where the bartenders could use a device kept behind the bar to reset the credits on the machine for each player, they had a power-interrupt circuit to avoid losing records in the event of a power outage, and they had ticket reels that would award tickets to players". Materially, it was determined that the devices involved no skill, only chance.

Robert B. Mackie, d/b/a Extra Point Tavern & Restaurant vs. Supervisor of Liquor Control, Mo. Admin. 99-2794 LC, 2000 WL 33958024 (December 5, 2000) resulted in a determination that simulated slot machines placed on the premises were illegal gambling devices because the users had no way to know the outcome of the wheels on the game. Thus, "chance" was a material element of the outcome of the games.

*As previously noted, critical to an analysis of any alleged gambling device under Missouri law is the element of "chance".* The machines developed and marketed by Torch specifically, and carefully, exclude this element. The Torch machines clearly include consideration as the users, should they choose to play even after accessing the "Prize Viewer", must deposit money. Additionally, a user may obtain a "prize" based on the predetermined outcomes and prizes, which again, are viewable by the user before they commit any money. However, because the outcomes of all games on the machine are selected and delivered sequentially from predetermined finite pools of game outcomes and all prizes are similarly predetermined, the user is not subject to any element of chance.

Unlike the devices at issue in Veterans of Foreign Wars Post 6477, the Torch machines use proprietary software which cannot be altered by employees or other persons to affect the outcomes or the prizes. Of the reported cases in Missouri, "chance" is the element which appears determinative of whether the device is for gambling purposes and, thus, an illegal gambling device. The Torch machines do not contain the element of chance.



Torch machines are meant for the amusement of its users and not intended, in any manner, for use as a gambling device. Torch recognizes that on first impression, by simply viewing the machine, it may look substantially similar to a gaming device which may be found at a casino. However, great care has been taken to ensure that Torch's machines do not contain an element of chance. Since chance is material to a determination of whether a machine is an illegal gambling device, we are confident that Torch's machines are not gambling devices under Missouri law.

I do note that we have seen a letter from the Missouri Gaming Commission which has been presented to some owners of locations where Torch licenses space for its games. This letter has been held out as an unequivocal determination that the Torch machines are illegal. However, the letter does not name the Torch machines nor does it cite to any Missouri law; instead referencing Iowa, Wyoming, Florida, and Ohio law. Torch is not aware that the Gaming Commission has ever evaluated its machines or the software.

Here is the list of stores where the Torch machines are, or were, located in Linn County. Please note that the owners of the locations do not own or operate the machines.

Prenger's 2 Bucklin	214 Livingston St.	Bucklin
Prenger's Brockfield	342 Main St.	Brockfield
Eagles Marceline	331 N Chestnut St.	Marceline
County Line Convenience #1	110 S Missouri Ave.	Marceline
County Line Convenience #2	377 W Main St.	Brockfield
Nations Tub LLC	125 E Canal St.	Brockfield

Please give me a call, or send me an email after you have reviewed this email, so that we can set up a time to meet with you. I truly appreciate you taking the time to talk to me and look forward to meeting.

*Timothy T. Sigmund*

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